

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GREGORY C. MILTON,)	
)	
Petitioner,)	
)	
v.)	04-CA-10580-MEL
)	
)	
METRO BOSTON INPATIENT UNITS OF)	
THE LEMUEL SHATTUCK HOSPITAL,)	
)	
Respondent,)	<u>O R D E R</u>

LASKER, D.J.

Pursuant to the Order of the Court of Appeals for the First Circuit, dated July 15, 2004, the plaintiff moves for a certificate of appealability. The motion must be denied.

As indicated in this court's written decision, dated March 17, 2004, a federal writ of habeas corpus, which the plaintiff is seeking, is available only to persons "in custody" at the time the petition seeking such relief is filed, 28 U.S.C.A. § 2254.

Since the plaintiff in this case was not, at the time he filed his complaint in this case, in custody under the 1988 conviction he seeks to attack, his petition must necessarily be dismissed for lack of jurisdiction.

The motion for certificate of appealability is denied.

It is so ordered.



Dated: August 18, 2004
Boston, Massachusetts

/s/ Morris E. Lasker
U.S.D.J.